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May 16, 2017

FOIA CONFIDENTIAL TREATMENT REQUESTED

By Electronic Mail

Federal Election Commission
Office of the General Counsel
Attn: Christopher Edwards
999 E Street, NW
Washington, DC 20436

Re: MUR 7122

**American Pacific International Capital, Inc.
Wilson Chen
Gordon Tang
Huaidan Chen**

Dear Mr. Edwards:

On behalf of American Pacific International Capital, Inc. ("APIC"), Wilson Chen, Gordon Tang and Huaidan Chen (the "Respondents"),

To this end, we appreciate the Commission's courtesy of extending the deadline for submitting factual and legal materials until today's date.

During this time, we have gathered further documents from the Respondents that provide greater context into the facts and circumstances underlying MUR 7122. For the Commission's consideration, we are providing a Supplemental Response that addresses issues raised in the Factual and Legal Analysis of April 11. In particular, we direct your attention to three separate Declarations made by Wilson Chen, Gordon Tang, and Huaidan Chen, which are appended to, and from which, the Supplemental Response draws.

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In the alternative, however, should you find this new information persuasive, Respondents ask that the Commission find that there is no reason to believe that Respondents have violated 52 U.S.C. § 30121(a)(1)(A) of the Federal Election Campaign Act of 1971 ("FECA"), and that the Commission close the Matter without any further action.

FOR THE RESPONDENTS



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SUPPLEMENTAL RESPONSE

Introduction

At this time, Respondents wish to address three points raised in the Commission's Factual and Legal Analysis of April 11. In Respondents' view, the Commission did not have a complete understanding of the facts and circumstances underlying APIC's decision to make political contributions to Right to Rise USA in 2015. Respondents appreciate the opportunity to further clarify the legal basis on which APIC did so.

1. AS EXECUTIVE DIRECTOR OF APIC, WILSON CHEN FUNCTIONED AS THE EQUIVALENT OF A "SPECIAL COMMITTEE" IN DECIDING TO CONTRIBUTE TO RIGHT TO RISE USA.

In the Factual and Legal Analysis, the Commission asserts that "[w]here decision-making authority is vested with U.S. citizens or permanent resident aliens, foreign national corporate board members must not determine who will exercise decision-making authority" over the making of political contributions in U.S. elections.¹ As precedent for this assertion, the Commission points to various Advisory Opinions and closed Matters Under Review that, it asserts, have the practical effect of ensuring the "exclusion of foreign nationals from direct or indirect participation in the decision-making process related to election-related activities."²

Respondents do not dispute either this rendering of the meaning of the statute, or that the statute's purpose is to foreclose foreign nationals at a foreign parent corporation from participating in the political contributions of a domestic subsidiary where decision-making authority is vested with U.S. citizens or permanent resident aliens. They do, however, dispute, as explained further below, the suggestion that foreign nationals serving on the APIC board did – as a factual matter – participate in the organization's decision to make political contributions to Right to Rise USA.

Respondents further contend that APIC acted consistent with the Commission's previous holding that a foreign parent's corporate board may make a general corporate policy decision to establish a separate segregated fund ("SSF").³ In Advisory Opinion 2000-17 (Extendicare Health Services, Inc. ("Extendicare")), the Commission stated this rule:

The board itself may make the general corporate policy decision to establish an SSF, or it may delegate the authority to make this decision to the Special Committee. However, the board must delegate all decisions concerning the administration of the SSF to the Special Committee or to some other corporate personnel group comprised exclusively of United

¹ Factual & Legal Analysis at 4-5 (Apr. 11, 2017).

² *Id.* at 5.

³ Advisory Op. 2000-17 (July 28, 2000).

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States citizens or individuals lawfully admitted for permanent residence in the United States.⁴

Although it is true that APIC neither formally established an SSF or other political committee, nor did it delegate the authority to make this decision to a "Special Committee," Wilson Chen had broad decision-making authority over U.S. operations in his capacity as Executive Director of APIC and functioned as the equivalent of Extendicare's "Special Committee." That is, as a U.S. citizen, and without the involvement of any foreign nationals, Mr. Chen possessed and exercised the decision-making authority with regard to the making of political contributions in the United States, including the decision to make contributions to Right to Rise USA. Indeed, Mr. Chen both possessed the authority to establish and administer a SSF that drew upon funds generated solely by APIC's domestic operations for this purpose operated in this manner in practice. Mr. Chen believed that he was conforming to the FECA by not coordinating such activities with foreign nationals. Accordingly, the Commission should not find reason to believe that Mr. Chen knowingly provided substantial assistance to a foreign national for the purpose of making a prohibited contribution.

2. THE FOREIGN NATIONALS SERVING ON APIC'S BOARD OF DIRECTORS NEITHER GRANTED, NOR DID WILSON CHEN SEEK, APPROVAL PRIOR TO MAKING POLITICAL CONTRIBUTIONS TO RIGHT TO RISE USA.

In its Factual and Legal Analysis, the Commission suggests that "foreign nationals may have been involved in making the contributions to Right to Rise because the APIC board of directors, which included foreign national directors, apparently approved Wilson Chen's proposal to contribute."⁵

In fact, when APIC was established in 2002, Mr. Chen, the organization's Executive Director, "was granted broad decision-making authority that encompassed all aspects of APIC's U.S. operations."⁶ Though the APIC board did not specify at that time, or subsequently, that political contributions came within Mr. Chen's authority, this would have been unnecessary. The only matters concerning APIC's U.S. operations that were and are presented to APIC's board for approval are "major investment decisions affecting real estate transactions," and some "corporate governance" issues.⁷ Mr. Chen's broad decision-making authority was a continuation of the role that he played at APIC's corporate predecessor, Wilson Environmental Consulting, Inc. ("Wilson Environmental"), which was established in 1998.⁸ Indeed, when Mr. Chen converted his company from Wilson Environmental to APIC, he brought on foreign investors, and broadened the size of his board of directors, but retained his broad decision-making authority with regard to all day-to-day matters.

⁴ *Id.* at 6.

⁵ Factual & Legal Analysis at 5.

⁶ See Huaidan Chen Decl. ¶ 2, App. A; Gordon Tang Decl. ¶ 2, App. B.

⁷ See Huaidan Chen Decl. ¶ 4; Gordon Tang Decl. ¶ 3.

⁸ On October 10, 2002, Wilson Environmental filed its Articles of Amendment with the Oregon Secretary of State formally changing its name to American Pacific International Capital, Inc.

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Moreover, as attested to in the three Declarations appended to this Supplemental Response, Mr. Chen did not consult with the foreign nationals serving on APIC's board of directors prior to making the political contributions in question.⁹ This derives from the fact that Huaidan Chen and Gordon Tang are the only foreign nationals then or currently serving on the APIC board. As such, it was Mr. Chen's decision alone to donate a total of \$1.3 million to Right to Rise USA in 2015. As a result, the Commission should not find a reason to believe that either Huaidan Chen or Mr. Tang violated the FECA's foreign national contribution ban by participating in decisions involving election-related activities. Relatedly, the Commission should not find a reason to believe that APIC as an entity violated the Act's foreign national contribution ban.

3. THE QUOTES ATTRIBUTED TO WILSON CHEN AND GORDON TANG BY THE INTERCEPT DO NOT ACCURATELY REFLECT THE MANNER IN WHICH APIC MADE POLITICAL CONTRIBUTIONS TO RIGHT TO RISE USA.

In the Factual and Legal Analysis, the Commission points to the quoted statement attributed to Mr. Chen—"I proposed to make a donation to the Republican Party and then let the board of directors approve it before sending the donation"—as evidence that APIC's board "may have approved the payment."¹⁰ The Commission further notes that Respondents "do not deny the accuracy of this quote and they do not deny that the board may have approved the payment."¹¹ To be clear, Respondents dispute the accuracy of this quote, and assert that the foreign nationals serving on APIC's board did not approve the payment.

In fact, as noted above,¹² there was no prior approval by foreign nationals serving on the APIC board of the political contributions to Right to Rise USA, nor was a contribution to the Republican Party ever contemplated. Although Mr. Chen questions the accuracy of the quote as written, even if the words as quoted were accurate, Mr. Chen was certainly speaking imprecisely. Regarding his word choice, this imprecision was the likely result of two factors. First, English is not Mr. Chen's native language—his native language is Cantonese—and he did not intend to convey the meaning of the quoted statement as inferred by the Commission. Second, the interview with *The Intercept* took place in an informal setting that was impacted by the liberal consumption of alcohol, which further compounded Mr. Chen's lack of verbal precision. Understood in this context, the Commission should not give much credence to this statement.

We also wish to clarify another quoted statement from *The Intercept* article that may be inaccurately construed as implying prior APIC board approval of the political contributions. With respect to the quoted statement attributed to Mr. Tang—"Wilson said to donate, so I did, I don't really mind"¹³—this translation from Cantonese into English is incorrect. Instead, a

⁹ See Wilson Chen Decl. ¶ 6, App. C; Huaidan Chen Decl. ¶ 5; Gordon Tang Decl. ¶ 5.

¹⁰ Factual & Legal Analysis at 5 (citation omitted).

¹¹ *Id.*

¹² *Id.*

¹³ Jon Schwarz & Lee Fang, *The Citizens United Playbook: How a Top GOP Lawyer Guided a Chinese-Owned Company into U.S. Presidential Politics*, THE INTERCEPT (Aug. 3, 2016), <https://theintercept.com/2016/08/03/gop-lawyer-chinese-owned-company-us-presidential-politics/>.

Conclusion

¹⁴ Sonia Ng Aff. at 1, App. D.

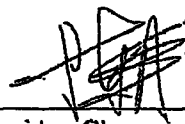
Appendix A

Rec'd 5-16-17

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DECLARATION OF HUAI DAN CHEN

1. I am one of two majority shareholders of American Pacific International Capital, Inc. ("APIC"). I have served in this position since 2002. I also sit on the organization's board. I am a Chinese national.
2. In 2002, when APIC was established, Wilson Chen, Executive Director, was granted broad decision-making authority that encompasses all aspects of APIC's U.S. operations, which includes day-to-day decision-making authority about any expenditures.
3. The only matters brought before the APIC board are with respect to major investment decisions affecting real estate transactions by the company and corporate governance activities.
4. As APIC's sole decision-maker with respect to all political contributions made in connection with U.S. elections, it was Mr. Chen's decision to donate a total of \$1.3 million to Right to Rise USA in 2015.
5. Mr. Chen did not consult with me prior to making the aforementioned contributions to Right to Rise.
6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2017.



Huaidan Chen
Member, Board of Directors
American Pacific International Capital, Inc.

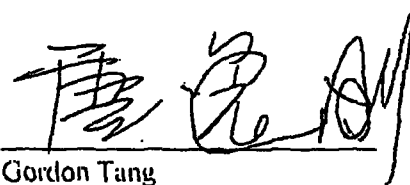
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Appendix B

MUR #7122

DECLARATION OF GORDON TANG

1. I am one of two majority shareholders of American Pacific International Capital, Inc. ("APIC"). I have served in this position since 2002. I am also the Chairman of the organization's board. I am a Chinese national.
2. In 2002, when APIC was established, Wilson Chen, Executive Director, was granted broad decision-making authority that encompasses all aspects of APIC's U.S. operations, which includes day-to-day decision-making authority about any expenditures.
3. The only matters brought before the APIC board are with respect to major investment decisions affecting real estate transactions by the company and corporate governance activities.
4. As APIC's sole decision-maker with respect to all political contributions made in connection with U.S. elections, it was Mr. Chen's decision to donate a total of \$1.3 million to Right to Rise USA in 2015.
5. Mr. Chen did not consult with me for prior approval before making the aforementioned contributions to Right to Rise.
6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2017.



Gordon Tang
Chairman/President, Board of Directors
American Pacific International Capital, Inc.

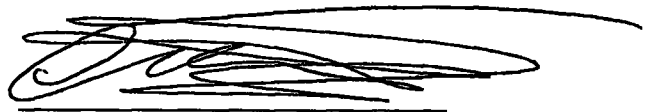
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Appendix C

MUR #7122

DECLARATION OF WILSON CHEN

1. I am a U.S. citizen, having received my citizenship in 2005.
2. I am the Executive Director of American Pacific International Capital, Inc. ("APIC"). I have served in this position since 2002.
3. In my capacity as Executive Director of APIC, I directly oversee APIC's U.S. operations and manage solely day-to-day operations and activities. I also sit on the organization's board.
4. Since the founding of APIC in 2002, I have exercised broad decision-making authority that encompasses all aspects of APIC's U.S. operations, including the decision to make political contributions.
5. As APIC's sole decision-maker with respect to all political contributions made in connection with U.S. elections, it was my decision, and my decision alone, to donate a total of \$1.3 million to Right to Rise USA in 2015.
6. I did not consult with APIC's board for prior approval in order to make the aforementioned contributions to Right to Rise.
7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2017.



Wilson Chen
Executive Director
American Pacific International Capital, Inc.

16044461584

Appendix D

Vimeo Recording – Transcript (from Cantonese) and Translation (to English)

Source: <https://vimeo.com/177295918?ref=em-v-share>

(男) 佢哋要退返俾人，係嗎？

(Male) they had to return the money to people, is that right?

(女) 係唔係因為嗰陣時佢哋已經輸咗呀？

(Female) Is it because at that time they had lost?

(男) 我都唔知呀，佢自己咁好應該知道，唔係邊個肯退款？

(Male) I don't know either. He is so good that he should know. Otherwise who would be willing to return the money?

(女) 係嘅！其實佢哋有乜嘢方面，呢個政治家你覺得有乜嘢優點呢？

(Female) Yes. In fact in what aspects ... what good qualities you think that this politician has?

(男) 我都未見過佢。

(Male) I have never met him.

(女) 哦，即係你都未見過 Jeb Bush 本身嘅？

(Female) Oh, you have never met Jeb Bush himself?

(男) 未見過佢。

(Male) Never met him.

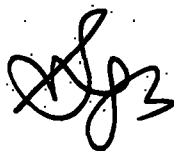
(女) 咁點解又會想贊助佢哋嘅競爭嘅？

(Female) Then why you thought about sponsoring their campaign?

(男) Wilson 話要俾咪俾，我都有乜所謂

(Male) Wilson said to donate, so donated. It did not matter to me.

Translated by



Sonia Ng

Date: 2017.04.21

AFFIDAVIT

I, SONIA S. NG, make the following declaration:

1. I am a professional Chinese interpreter and translator, and I am competent to translate from Chinese into English and from English to Chinese.
2. My academic and professional qualifications up to 2017 are stated in my Vitae which is attached to this affidavit.
3. I am an American citizen and I am of full legal age and capacity; I currently reside at Concord, CA 94521.

I declare that to the best of my ability, I have truly and faithfully performed the following service:

Nature of job: Video recording transcribing (Cantonese) and translating into English

Source of document: <https://vimeo.com/177295918?ref=em-v-share>

Date performed: 2017.04.21



Sonia S. Ng
(Chinese translator)

Date: 2017.04.21

SONIA NG

Chinese Interpreter / Translator (Mandarin and Cantonese)

Concord, CA 94521

Cell:

E-mail:

Professional Qualifications:

Qualified Chinese Simultaneous Interpreter (Mandarin and Cantonese), the US Department of State (1991 - current)

Qualified Chinese Translator, the US Department of State (since 1991 - current)

Provisional Qualified Interpreter (Mandarin and Cantonese):

Contra Costa County Courts

Solano County Courts

Sacramento County Courts

Educational Background:

Ph.D. in Chinese Language and Literature (1988, The Chinese University of Hong Kong)

M.Ed. in Education (1984, University of Toronto, Canada)

M.A. in Chinese Studies (1977, The Chinese University of Hong Kong)

B.A. in Chinese History (1975, The Chinese University of Hong Kong)

Experiences in Interpreting and Translation:

Over 25 years as contract simultaneous interpreter (Cantonese and Mandarin) and translator for the Department of State, USA.

Over 25 years as interpreter for county superior courts in San Francisco Bay Area.

13 years as designated interpreter for the US-China judicial exchange programs, Massachusetts Judges Conference and University of Massachusetts.

Specialty:

Simultaneous Interpretation for International Conferences and Seminars

Written translation: legal documents and contracts

Special language Translation: Classical Chinese

Interpreter for visiting Chinese delegations invited by the US State Department

Interpreter for American judges visiting China for judicial programs